

MEMORANDUM OF UNDERSTANDING

between

The U.S. Department of the Interior
Bureau of Land Management, Alaska

and

The Environmental Protection Agency, Region 10

concerning

Preparation of the Environmental Impact Statement
for the Willow Master Development Plan

I. INTRODUCTION

NEPA requires that federal agencies consider the environmental impacts associated with agency action and decision-making. Council on Environmental Quality (CEQ) regulations emphasize agency cooperation early in the NEPA process and set out requirements that apply to lead agencies and cooperating agencies in the development of EISs. 40 CFR §§ 1501.5, 1501.6.

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between BLM Alaska (herein referred to as simply "BLM") and the Environmental Protection Agency Region 10 (herein referred to as simply "EPA") for the purpose of preparing the Willow Master Development Plan Environmental Impact Statement (Willow EIS).

II. PURPOSE. The purpose of this MOU is to outline the terms of cooperation between, and the roles and responsibilities of, the BLM and the EPA (hereinafter the "Parties") with respect to the preparation of the Willow EIS.

III. OBJECTIVES. The primary objective of the BLM and the EPA through this MOU is to ensure an accurate, thorough and robust analysis of information in the Willow EIS based on the best available science, which is best achieved in a cooperative and collaborative environment. It is to the benefit of the Parties and the public that the BLM and the EPA cooperate and coordinate efforts under this MOU in order to maximize use of available resources and special expertise and minimize duplication in those areas of overlapping responsibilities.

IV. AUTHORITY. The Parties enter this MOU pursuant to the following authorities:

A. BLM enters into this MOU under the authority of and in compliance with the following acts and regulations:

1. National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*), 40 CFR Parts 1500-1508, and 43 CFR Part 46.

B. The EPA enters into this MOU under the authority of:

1. National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*; and
2. Council on Environmental Quality's regulations, 40 CFR Parts 1500-1508 (in particular, 40 C.F.R. §§ 1501.5, 1501.6 1508.5, and 1508.16, describing lead agency and cooperating agency roles and responsibilities).

V. RESPONSIBILITIES

A. Joint responsibilities of the Parties:

1. The Parties agree to jointly review all substantive documents pertaining to the primary phases of EIS preparation, including:
 - a) Preliminary Draft EIS; and
 - b) Preliminary Final EIS.
2. The Parties agree to participate in the planning process in good faith and make all reasonable efforts to resolve disagreements.
3. Each Party agrees to fund its own expenses associated with the Willow EIS process.
4. Within five working days of the date of execution of this MOU, both Parties will notify the other in writing of one individual who shall serve as the Point of Contact (POC) for performing the duties set forth in the MOU.
5. Each Party's POC shall serve as the day-to-day liaison and/or contact person for the Willow EIS. POCs must be available for frequent contacts, including phone calls, emails, and meetings, and shall coordinate/facilitate within their respective agencies, as the EIS is developed and completed.

B. BLM Responsibilities

1. The BLM is the lead federal agency for the Willow EIS as set forth in 40 CFR §§ 1501.5 and 1508.16. As lead agency, the BLM retains final responsibility for the content of all NEPA documents, which include the Draft EIS, the Final EIS, and the BLM Record of Decision (ROD). The BLM's responsibilities include determining the purpose of and need for the EIS, identifying and documenting issues associated with the proposed action provided by the proponent, developing alternatives for analysis, identifying and analyzing effects of the alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
2. The BLM shall establish an interdisciplinary team (IDT) consisting of various individuals employed by the DOI and potentially other agencies with subject matter expertise in matters related to the preparation of the Willow EIS. The IDT shall be responsible for preparing, reviewing and commenting on various documents in connection with the Willow EIS. If the EPA has staff with technical expertise to bring to the IDT and the topic addressed by the IDT is relevant to EPA's various authorities or special expertise, the BLM may invite EPA to participate in the IDT.
3. If needed, BLM will invite the EPA to meet with the third party contractor to review relevant EPA information and guidance. This meeting shall occur as early as possible so each agency's resource information needs are understood early in the NEPA process.
4. The BLM will consider the comments, recommendations, data, and/or analyses provided by the EPA in the Willow EIS planning process, giving particular consideration to those topics on which the EPA has jurisdiction by law or special expertise.
5. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the EPA with copies of documents relevant to the Willow EIS, including a preliminary range of alternatives to the proposed action, technical reports, data,

- analyses, comments received, preliminary draft and final EISs, other working drafts related to environmental reviews, and the Draft and Final Willow EISs.
6. The BLM will describe the roles and responsibilities of the EPA as a cooperating agency in the Draft and Final Willow EISs.
 7. The BLM will invite the EPA POC to cooperating agency meetings until the issuance of the Final Willow EIS.
 8. The BLM will coordinate with the EPA on developing the alternatives to be analyzed in the EIS, and timelines for cooperating agency review. Cooperating agency review may be concurrent with other processes in order to ensure compliance with Secretarial Order 3355 (SO 3355).
 9. The BLM will engage the EPA when a decision is required regarding substantive work or material to be included in the EIS that is within the scope of EPA's jurisdiction by law or special expertise. In all instances involving questions concerning the content or relevance of any material (including all data, analyses and conclusions), BLM will make the final determination on the inclusion or deletion of any such material.
 10. The BLM shall notify the EPA prior to issuance of its ROD and allow the EPA to review and comment on the draft ROD. Draft ROD review will be within the time period established by BLM.
 11. The BLM will coordinate with the EPA to ensure that the analysis of impacts is sufficient to determine compliance with the authorities listed in Section IV. B. Where the BLM and the EPA disagree on substantive elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the EPA's views in the Draft EIS and the Final EIS.

C. EPA Responsibilities

1. The EPA is a cooperating agency for the Willow EIS as set forth in 40 CFR §§ 1501.6 and 1508.5.
2. The EPA will attend and participate in the cooperating agency meetings either physically or via teleconference as appropriate, as staff and resources allow.
3. The EPA will review preliminary draft and preliminary final EIS documents, as well as other preliminary documents pertaining to the primary phases of EIS preparation (e.g., scoping comments, preliminary alternatives, and other preliminary documents as appropriate), subject to staff availability. In addition, the EPA will assist with development of appropriate Best Management Practices and potential mitigation measures.
4. The EPA will carry out activities relating to the Willow EIS in an expeditious manner, recognizing that the mission requirements, funding, personnel, and other priorities may affect the ability to fully implement the provisions in this MOU.
5. The EPA will advise the BLM on EPA's statutory and regulatory responsibilities as well as any EPA regulations relevant to the scope of the Willow EIS, and assist BLM in preparing text regarding these requirements for inclusion in the Willow EIS.
6. The EPA acknowledges that documents provided by BLM are for the purpose of review and comment by the EPA only and shall not be distributed to any individuals or entities who are not parties to this MOU, except as required by law, and except where the EPA

has contracted for work associated with responsibilities under this MOU and the contractor is required not to distribute any documents related to that work to any individuals or parties not parties to this MOU.

7. The EPA agrees to provide consolidated written comments to BLM on the preliminary Draft EIS, the preliminary Final EIS, and other relevant draft documents within the time period established by BLM. Regulations define certain review periods for specific work products (unless a different mutually agreed upon timeframe is established).


VI. MISCELLANEOUS

- A. This MOU does not alter the responsibilities of the Parties under Federal law. Nothing in this MOU will be construed as affecting the authorities of the Parties or as binding beyond their respective authorities.
- B. This agreement does not alter the EPA's responsibilities under NEPA and Section 309 of the Clean Air Act to conduct an official independent review of the Draft EIS and Final EIS during public comment periods of these documents.
- C. Nothing in this MOU obligates the Parties to obligate or expend funds in excess of appropriations.
- D. The Parties agree not to utilize any individual or organization for purposes of environmental analysis or cooperating agency representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Willow EIS.
- E. Any information furnished to the BLM and the EPA under this agreement is subject to the Freedom of Information Act (FOIA) (5 U.S.C. §552).
- F. The Parties shall not distribute any documents or information shared pursuant to this MOU, except as required by law or by written consent of the other party. The Parties will coordinate with each other prior to the release of information associated with the Willow EIS pursuant to information-sharing laws and regulations including FOIA.
- G. Modifications regarding the scope of the MOU shall be made by mutual consent of the Parties, in writing, signed and dated by both Parties.
- H. This MOU is not intended to create any right, benefit, trust, responsibility, substantive, procedural, or enforceable law or equity, by any party against the United States, its agents, officers, assigns, or employees. This MOU does not direct or apply to any person outside of BLM and/or the EPA.
- I. This MOU is effective as of the date of the last signature below and will expire upon BLM's issuance of a Final EIS, unless extended by written agreement or terminated by written notice. A Party may terminate its participation in this MOU at any time by providing written notice to the other Party at least thirty (30) days in advance of the desired termination date.

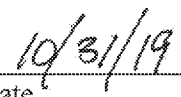
APPROVED:

Shelly Jones
Acting State Director
Bureau of Land Management, Alaska

Date



Andrew Baca, Director
Regional Administrator's Division
Environmental Protection Agency



Date

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